

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1807, *Petitions for Reallocation of Local Tax*, and Section 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Regulation 1807 prescribes the procedures the Board follows when reviewing a request or inquiry (petition) from a jurisdiction, other than a submission under RTC section 6066.3, for investigation of suspected misallocation of local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.). Regulation 1828 prescribes similar procedures the Board follows when reviewing a district's petition for investigation of suspected improper distribution or nondistribution of district transactions (sales) and use tax under the Transactions and Use Tax Law (RTC § 7251 et seq.). The proposed amendments to Regulations 1807 and 1828 improve the review processes by: (1) allowing a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allowing a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allowing a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) requiring the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) requiring a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorizing appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically granting opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. The proposed amendments to Regulations 1807 and 1828 also clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions

filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates. The amendments are not retroactive.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on November 15-17, 2011. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on November 15, 16, or 17, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1807 and 1828.

AUTHORITY

Regulations 1807 and 1828: RTC section 7051.

REFERENCE

Regulation 1807: RTC sections 7209 and 7223.

Regulation 1828: RTC section 7270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC § 7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1807 and 1828 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1807 and 1828 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on November 15, 2011, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 1807 and 1828 during the November 15-17, 2011, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1807 and 1828. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

The Board has prepared underlined and strikeout versions of the text of Regulations 1807 and 1828 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to

Regulations 1807 and 1828, and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1807 and 1828 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to the proposed amendments to Regulation 1807 or Regulation 1828, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1807 and 1828, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.